

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No. 25958 of 2001

Between:

Gunda Thirupathaiah

... Petitioner

And

Government of India, represented by its
Deputy Secretary, Ministry of
Home Affairs, Freedom Fighters
Division, New Delhi and another

... Respondents

:: ORDER ::

Counsel for Petitioners: Sri Tuhin Kumar for
Sri C.V.Nagarjuna Reddy

Counsel for the Respondents: Sri A.Rajashekar Reddy
Assistant Solicitor General

September 5, 2006

In this petition, the petitioner has prayed for issue of a mandamus to the respondents to grant him pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme').

The petitioner's claim is entirely founded on the assertion contained in the affidavit filed by him that in furtherance of the call given by Andhra Mahasabha Socialist and Communist Party, he had taken part in Anti-Nizam Government activities from August, 1947 to September, 1948. In paragraph 3 of his affidavit, the petitioner has averred that as a consequence of arrest warrant issued against him by the Nizam Government, he went under- ground and participated in the anti-government activities. He has then averred that the application filed by him for grant of pension under the 1980 Scheme was forwarded to the committee constituted by the Government of India under the Chairmanship of Sri Govinda Bhai Shroff, but no decision was taken by the committee. He then filed Writ Petition No. 13293 of 1989, which was disposed of by the High Court on 15-12-1995 by directing the respondents to consider his case for grant of pension under the 1980 Scheme. In compliance of the court's order, Under Secretary to the Government of India, Ministry of Home Affairs, sent letter dated 3-11-1996 conveying him that his case had been rejected as early as on 10-7-1986 on the ground that no acceptable evidence has been produced to show that he is a freedom fighter.

Sri Tuhin kumar, learned counsel appearing for the petitioner relied on the list of the persons who were arrayed as accused in C.C.No.5-50-1357 F and argued that the petitioner should be treated as a person falling within the definition of the term 'freedom fighter' for the purpose of the 1980 Scheme because his name was included in that list. Learned counsel further submitted that the petitioner had

taken part in the struggle launched against the Government of Nizam and, therefore, he is entitled to pension under the 1980 Scheme. In my opinion, inclusion of the petitioner's name in the list of persons arrayed as accused in one of the crimes cannot be equated with an arrest warrant issued by the competent authority of erstwhile Government of Nizam and, therefore, the same cannot be made basis for recording a finding that the petitioner falls within the definition of 'freedom fighter'.

Paragraphs 2.1, 2.2 and 2.3 of the 1980 Scheme, which have bearing on the petitioner's claim read as under:

"2.1: Eligible dependents of martyrs:- A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidence in such cases.

2.2: Imprisonment:- A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

- (a) Imprisonment/detention certificate from the concerned authority, District Magistrate or the State Govt. Indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. OR
- (b) In case records of the relevant period are not available, a non-availability of records certificate (NARC) from the concerned State/Union Territory Administration along with 2 Co-prisoner certificate (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail. In case the certifier happens to be sitting or Ex. M.P./MLA only one certifier in place of the two is required.

. Gist of relevant Circulars/Instructions issued by the Govt. of India under the Scheme regarding claims based 'Imprisonment/Detention/' is given in Appendix B-

2.3: Underground:- A person who on account of his

participation in freedom struggle remained underground for more than Six months provided he was;

- A. A proclaimed offender; or
- B. One on whom an award for arrest was announced; or
- C. One for whose detention, order was issued but not served

Explanation: Voluntary underground suffering or self-exile suffering for party work under the command of the party leaders, are not covered as eligible sufferings for pension under the Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

- (1) Documentary evidence by way of Court's/Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention.
OR
- (2) Where records of the relevant period are not available, a non-availability of records certificate (NARC) from the concerned State/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit.

. Gist of relevant Circulars/Instructions issued by the Government of India under the Scheme regarding claims based on 'Underground/Abscondence' is given in Appendix B-II."

An analysis of the above reproduced paragraphs of the 1980 Scheme makes it clear that pension can be granted only to those who fulfill the conditions of eligibility. A person who had suffered imprisonment of six months on account of participation in freedom struggle is eligible to receive pension under the 1980 Scheme provided he furnishes either of the documents enumerated in sub-clauses (a) or (b) of paragraph 2.2 or proves that he remained underground after being declared a proclaimed offender or issue of detention order or for whom award for arrest was announced. The petitioner has not produced any tangible evidence to show that he had

taken part in Hyderabad Liberation Movement and fight against the Government of Nizam or that he had remained underground pursuant to arrest warrant issued by the Government of Nizam. Therefore, it is not possible to entertain his prayer for issue of a mandamus to the respondents to sanction pension in his favour under the 1980 Scheme.

For the reasons mentioned above, I hold that the petitioner has failed to establish that he had taken part in the fight against the erstwhile Government of Nizam or that he remained underground after issue of arrest warrant by the Government of Nizam. Consequently, the writ petition is dismissed.

G.S. SINGHVI, CJ

September 5, 2006

GRR